

مسائل متعلّقة
بأحكام الأسير المسلم

Issues Pertaining to the
Rulings Regarding the
Muslim Prisoner

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دارالکتاب

RELEASING THE MUJĀHID FROM CAPTIVITY¹

There are five main issues:

1. Ransoming prisoners
2. Killing enemy prisoners if they kill Muslim prisoners
3. A Mujāhid fleeing from captivity after killing the enemy and taking his wealth
4. If the enemy sets him free on the condition that he remains among them.
5. If the enemy sets him free on the condition that he does what they want in the Islamic lands.

ONE: RANSOMING PRISONERS

There are two points to consider:

1. Ransoming prisoners with money.
2. Ransoming Muslim prisoners with enemy prisoners.

One: Ransoming prisoners with money

The jurists² have said – may Allāh the Exalted have mercy on them – that it is permissible to ransom the Muslim prisoners from the enemy with any form of money or wealth, other than weapons.³

¹ Taken from *Abkām al-Mujāhid Bin-Nafs Fi Sabīlillāhi* (‘aẓza wa jall) *fil-Fiqh al-Islāmī* by Dr. Mur’i ibn ‘Abdullāh ibn Mur’i, 2/434-443. *Maktabat al’-Ulūm wal-Hikam*.

² *Badā’i’ al-Sanā’i’* 6/95, *Sharh al-Siyar al-Kabīr* 4/311, *al-Qawānīn al-Fiqhiyyah* by Ibn al-Juzayy pg. 133, *Hāshiyat al-Khurashī* 4/97, *al-Hāwī al-Kabīr* 14/354, *Kashshāf al-Qinā’* 2/382, *al-Muhallā bi-al-Āthār* 5/364.

³ Ash’hab from the Mālikīs went against this and said, “It is permissible to [ransom them] with horses and weapons, if it is not feared that this will make them overcome the Muslims.” al-Nawawī said in *Rawdat al-Tālibīn*, “It is permissible [to ransom them] with our weapons that they have only.” There is no basis for these two views, and giving them weapons will make them overpower the Muslims and it will strengthen the disbelievers. See: *Hāshiyat al-Khurashī* 4/97, *Hāshiyat al-Sawqī* 2/208, *al-Dhakīrah* 3/390, and *Rawdat al-Tālibīn* 10/251.

They evidenced this with the following:

1. The *ḥadīth* of Abū Mūsā (may Allāh be pleased with him) that he said: The Messenger of Allāh (ﷺ) said, “Free the prisoner, feed the hungry, and visit the sick.”⁴
2. On the authority of Abū Juhayfah⁵ (may Allāh be pleased with him) who said: I said to ‘Alī (may Allāh be pleased with him), “Do you have knowledge of any revelation other than that in the Book of Allāh?” He replied, “No, by the One Who splits the grains of corn and creates the souls. I do not know of any understanding [like that] other than what Allāh gives to a man to understand the Qur’ān, and what is on these papers.” I said, “What is on these papers?” He said, “[The regulations of] blood-money, the freeing of captives, and [the judgement] that no Muslim should be killed for killing an infidel.”⁶
3. What was narrated on the authority of Sa’īd ibn Mansūr that the Messenger of Allāh (ﷺ) said, “It is an obligation upon the Muslims [to use their] booty to ransom their prisoners and pay their debts.”⁷

This establishes the permissibility of ransoming prisoners from the enemy with wealth from the Muslim treasury. If they cannot be ransomed with wealth from the treasury, then it is a collective obligation for them to be ransomed with the wealth of the rich Muslims, due to the previous evidences, and because it is necessary to rescue Muslim prisoners from the hands of the disbelievers. And Allāh knows best.

Two: Ransoming Muslim prisoners with enemy prisoners

⁴ *Sahīh al-Bukhārī* with *al-Fat’h*, The Book of Jihād and Expeditions, Chapter: Freeing the prisoner, *ḥadīth* #3046

⁵ He is Wahb ibn ‘Abdullāh ibn Muslim ibn Junādah ibn Habīb al-Suwā’ī, when the Prophet (ﷺ) died he had not yet reached puberty. He learnt from the Prophet (ﷺ) and was the companion of ‘Alī ibn Abī Tālib (may Allāh be pleased with him), and he was a governor of Kūfā. He died in the year 64 Hijrī. See: *al-Isābah* 6/490, #9187, and *Usd al-Ghābah* 4/684 #5486.

⁶ *Sahīh al-Bukhārī* with *al-Fat’h*, The Book of Jihād and Expeditions, Chapter: Freeing the prisoner, *ḥadīth* #3047

⁷ Sunan Sa’īd ibn Mansūr, The Book of Jihād, Chapter: On the ransom, *ḥadīth* #2821.

The jurists differed regarding the permissibility of ransoming Muslim prisoners with enemy prisoners. There are two opinions:

1. It is permissible to ransom them with enemy prisoners, and this is the view of the majority of jurists.⁸

They evidenced it with the following:

i. On the authority of ‘Imrān ibn al-Husayn⁹ (may Allāh be pleased with him) that the Messenger of Allāh (ﷺ) ransomed two Muslim men for one polytheist.¹⁰

Sacrificing prisoners to save a Muslim Mujāhid from captivity is better than killing the disbeliever.¹¹

2. It is not permissible to ransom Muslim prisoners for enemy prisoners, and this is the most well-known opinion from Abū Hanīfah¹² (may Allāh have mercy on him).

He evidenced this mainly by using the general verses that speak about killing disbelievers, including:

i. The saying of Allāh the Exalted,

⁸ *Badā’i’ al-Sanā’i’* 6/95, *al-Bahr al-Rā’iq* 5/140, *al-Ma’ūnah* 1/620, *Balghat al-Salik* 1/360, *al-Umm* 4/252, *al-Ahkām al-Sultāniyyah* pg. 235, *al-Hawī al-Kabir* 14/174, *al-Mughni* 13/135, *Kashshāf al-Qinā’* 2/380, and *al-Muballā bi-al-Athār* 5/364

⁹ He is ‘Imrān ibn al-Husayn ibn ‘Ubayd ibn Khalf al-Khuzā’ī, nicknamed Abū Nujayd. He accepted Islām in the year of Khaybar and fought with the Messenger of Allāh (ﷺ) in a number of battles. He was carrying the banner of Khuzā’ah on the Day of the Conquest. ‘Umar sent him to al-Basrah to teach the people. He died in the year 52 Hijrī, and some say 53 Hijrī. See *Usd al-Ghābah* 4/778, and *al-Isābah* 4/584 #6024.

¹⁰ Cited by al-Tirmidhī in *Hāshiyat al-Ahwadhī*, The Book of Expeditions, Chapter: On killing and ransoming prisoners, *hadīth* #1568. al-Tirmidhī said: This *hadīth* is *hasan sahih*, and its basis is in *Sahīh Muslim* with the *Sharh* of al-Nawawī, The Book of Vows, Chapter: There is no obligation to keep a vow of disobedience, *hadīth* #1641.

¹¹ *Badā’i’ al-Sanā’i’* (6/95), and *al-Bahr al-Rā’iq* (5/140)

¹² The previous two references are in endnote 10, and *Hāshiyat Ibn ‘Ābidīn* 6/228, and *Sharh al-Siyar al-Kabir* 4/296

﴿فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ﴾

then kill the Mushrikun (see V.2:105) wherever you find them¹³

ii. The saying of Allāh the Exalted,

﴿فَاضْرِبُوا فَوْقَ الْأَعْنَاقِ﴾

so strike them over the necks¹⁴

The textual implications of the previous two verses are that it is obligatory to kill disbelievers but this cannot be done if they are used as ransom, and it is not permissible to neglect obligations when one is able to perform them, at any time.¹⁵

Abū Hanīfah's use of the general meaning of the verses as evidence was debated because the meaning does not apply absolutely; rather, it is obligatory to kill them during times of war, but it is no longer obligatory after the Muslims overpower them.¹⁶

The Strongest Opinion

It appears that the first opinion is strongest, for it permits ransoming prisoners in exchange for enemy prisoners. The supporting evidences are strong, and this option rescues the Muslim from captivity, and Allāh knows best.

TWO: KILLING ENEMY PRISONERS IF THEY KILL MUSLIM PRISONERS

The jurists agreed – may Allāh have mercy on them – that the *Imām* of the Muslims has the right to kill the enemy prisoners if he sees there is benefit to it.

¹³ al-Tawbah, verse 5

¹⁴ al-Anfāl, verse 12

¹⁵ *Sharh al-Sīyar al-Kabīr* 4/297

¹⁶ *al-Sīyāsah al-Shar'īyyah* by Ibn Taymiyyah pg. 89

It was stated in *al-Ma'ūnah*: There is no difference of opinion on the permissibility of killing the enemy prisoners.¹⁷

In *Rahmat al-Ummah*, it says: They agreed that the *Imām* may choose whether he should kill the prisoners or make them slaves.¹⁸

Based on this, if the *Imām* sees that there is benefit in killing enemy prisoners if the enemy kills Muslim prisoners then it is permissible to do so, due to the general nature of the saying of Allāh the Exalted,

﴿فَاقْتُلُوا الْمُشْرِكِينَ﴾

then kill the Mushrikun¹⁹

and the saying of Allāh the Exalted,

﴿فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ﴾

Then whoever transgresses the prohibition against you,
you transgress likewise against him.²⁰

Also because the Prophet (ﷺ) killed a group of prisoners on the Day of Badr, including 'Uqbah ibn Abū Mu'īt, al-Nadr ibn al-Hārith and others.²¹

¹⁷ *al-Ma'ūnah* 1/620

¹⁸ *Rahmat al-Ummah fī Iktihlāf al-A'immaḥ* pg. 536

¹⁹ *al-Tawbah*, verse 5

²⁰ *al-Baqarah*, verse 194

²¹ Cited by Abū Dāwūd in his *Sunan* with *'Awn al-Ma'būd*, The Book of Jihād, Chapter: Killing the prisoner without presenting Islām to him, *hadīth* #2680, 2682, and Chapter: Killing a prisoner in captivity, *hadīth* #2683; also by al-Bayhaqī in *al-Sunan al-Kubrā*, The Book of Expeditions, Chapter: What should be done with the men past puberty, *hadīth* #18025, #18026, and 18027; also by Ibn Abī Shaybah in his *Musannaf*, The Book of Battles, Chapter: The Great Battle of Badr, 8/477. He said in *Mujma' al-Zawā'id*: al-Tabarānī reported it in *al-Awsat*, and it includes 'Abdullāh ibn Hammād ibn Numayr, but I do not know him. The rest of the narrators are trustworthy. *Mujma' al-Zawā'id*, The Book of Battles and Expeditions, Chapter: On the prisoners 6/89, on the authority of 'Abdullāh ibn 'Abbās (may Allāh be pleased with him), and also see: *al-Talkhīs al-Kabīr* 4/108

THREE: A MUJĀHID FLEEING FROM CAPTIVITY AFTER KILLING THE ENEMY AND TAKING HIS WEALTH

The jurists agreed²² - may Allāh the Exalted have mercy on them – that if the Mujāhid is able to escape from being captured by the enemy, then he may kill whoever he is able to from them, and take whatever he is able to of their wealth.

It was mentioned in *al-Hāwī al-Kabīr* that if a Muslim is captured by the enemy, and the prisoner is weak and oppressed, emigration becomes obligatory upon him if he is able, and it is permissible for him to deceive them with regards their selves and wealth, and fight them if they catch him while he is escaping.²³

Based on this, if the Mujāhid is captured by the enemy, then he must try to escape by whatever means possible, kill the enemy, and take his wealth.

This is indicated by the story of Abū Basīr²⁴ that when the Prophet (ﷺ) handed him over to two men from the Quraysh who came to ask for him based on the Hudaibiyyah treaty, not a single man from the polytheists came to the Prophet (ﷺ) but that he would hand him over, even if he was a Muslim. So Abū Basīr said to one of the two men, “By Allāh, O so-and-so, I see that you have a fine sword,” so the other one unsheathed his own sword. So Abū Basīr said, “Let me take a look at it.” When he was given it, Abū Basīr hit him until he died, and the other ran away.²⁵

²² *al-Mabsūt* 10/66, *Sharḥ al-Siyar al-Kabīr* 4/254, *al-Tāj wa-al-Iklīl bi-Hāmiṣh Mawāhib al-Jalīl* 4/548, *al-Umm* 4/247, *Rawdat al-Tālibīn* 1/282, *Mughnī al-Muhtāj* 6/55, *al-Mughnī* 13/185, and *Kashf al-Qannā’* 2/429

²³ *al-Hāwī al-Kabīr*

²⁴ He is ‘Utbah ibn Jāriyah, Abū Basīr al-Thaqafī, the Khalīf of Banū Zahrah. He was among the weak and oppressed in Makkah, so the Prophet (ﷺ) came and returned him to Quraysh based on what had happened in the Hudaibiyyah treaty. He escaped from Quraysh and attached himself to a group who would harm the Quraysh in their trade, so they requested the Prophet (ﷺ) to let them take shelter with him, and he agreed, so they went to al-Madīnah, except for Abū Basīr who had died. See: *al-Isābah* 4/359 #5413, and *Usd al-Ghābah* 3/455 #3536.

²⁵ *Sahīḥ al-Bukhārī* with *al-Fat’h*, The Book of Conditions, Chapter: Conditions in Jihād, and treaties with the enemy, part of a long *ḥadīth* #2731, 2732

The textual implications are that the Prophet (ﷺ) did not disapprove of Abū Basīr killing the man, and did not command him to pay blood-money,²⁶ so this indicates that what Abū Basīr did is permissible.

FOUR: IF THE ENEMY SETS HIM FREE
ON THE CONDITION THAT HE REMAINS AMONG THEM

If the enemy releases a Muslim captive on the condition that he remains in their land and does not leave, and does not betray them in their wealth or lives, then the jurists differed – may Allāh have mercy on them – on whether the Muslim has to be faithful to these conditions. There are three opinions:

1. He must be faithful to them.

This is the opinion of the Hanbalīs,²⁷ and one opinion of the Mālikīs.²⁸

They evidenced their opinion with the following:

- i. The general nature of the saying,

﴿وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ﴾

And fulfill the Covenant of Allāh when you have covenanted²⁹

- ii. The saying of the Prophet (ﷺ), “*The Muslims are [loyal to] their conditions.*”³⁰

2. He must be faithful to his covenant in not killing any of them and not taking their wealth, but he is not bound by the condition to remain in their land. It is obligatory upon him to leave their land.

This is the opinion of the Hanafīs,³¹ one opinion of the Mālikīs,³² and the Shāfi‘īs.³³

²⁶ *Fat’h al-Bārī* 5/439

²⁷ *al-Mughnī* 13/185, and *Kashshāf al-Qinā’* 2/429

²⁸ *al-Tāj wa-al-Iklīl bi-Hāmish Mawāhib al-Jalīl* 4/548, *Hashiyat al-Khurasbī* 4/21

²⁹ *al-Nahl*, verse 91

³⁰ *Sahīh al-Bukhārī* with *al-Fat’h*, The Book of Wages, the Wages of the broker 4/569

³¹ *Sharh al-Sīyar al-Kabīr* 4/306, and *Mukhtasar Ikhtilād al-‘Ulamā’* by at-Tahāwī 3/491

Their evidence was the following:

- i. Detaining him in their land is an oppression against him, and he is not oppressing them by leaving.³⁴
 - ii. It is forbidden to remain in the Abode of War, so that is not permissible for him, and he should not be faithful to their agreement.³⁵
3. He does not have to be faithful to any conditions; he may escape and kill whomever he is able to from them and take their wealth.

This is one opinion of the Mālikīs,³⁶ and the opinion of the Hanafīs when they enter the agreement with him, without him actually agreeing himself.³⁷ The apparent meaning of what Ibn Hazm said is that any covenants and oaths that he gave them nothing for, is also included in this.³⁸

They evidenced their saying with the following:

- i. The basis of his action is that he has been compelled, and the one under compulsion is not held to anything.³⁹
- ii. Restraining him is an oppression against him, so there is nothing to prevent him from fighting the oppression with whatever means it takes.⁴⁰

The Strongest Opinion

After laying out the opinions, it appears that if the enemy sets a prisoner free on the condition that he remains in their land, but he is unable to freely show his religion in worshipping Allāh the Mighty and Majestic, or he cannot show his religion, then he is oppressed in this matter.

³² *al-Tāj wa-al-Iklīl bi-Hāmish Mawāhib al-Jalīl* 4/548

³³ *al-Umm* 4/275, and *Rawdat al-Tālibīn* 10/282, 283

³⁴ *al-Umm* 4/275, and *Sharh al-Siyar al-Kabīr* 4/306

³⁵ *al-Tāj wa-al-Iklīl bi-Hāmish Mawāhib al-Jalīl* 4/549

³⁶ *al-Tāj wa-al-Iklīl bi-Hāmish Mawāhib al-Jalīl* 4/548, and *Hashiyat al-Khurasānī* 4/21

³⁷ *Sharh al-Siyar al-Kabīr* 4/306

³⁸ *al-Muhallā bi-al-Āthār* 5/364

³⁹ See the two references in note 35.

⁴⁰ *Sharh al-Siyar al-Kabīr* 4/306, and *al-Mabsūt* 10/66

But if he is able to show his religion, then the strongest opinion is the first one - he must remain faithful to the conditions that brought about his release from captivity. This is due to the aforementioned evidences that obligate faithfulness, and because it is to the benefit of captives for they will be able to be free if they fulfill their agreed upon conditions.

It also represents *da'wah* to Islām, for perhaps remaining in the land of the disbelievers while they are able to show their religion is better than leaving, because by that they are able to spread and show the Islamic faith.

But if the prisoner that has been released to remain in the land of the disbelievers is unable to show his religion and is oppressed in it, then the strongest opinion in this instance is that he leave the land of the disbelievers and flee with his religion.

It is not permissible for him to kill any of them or to take any of their wealth, to fulfill the conditions as long as he is able to. Based on this, the second opinion is the strongest in this instance – he should not kill anyone, nor should he take their wealth, but he is not bound to stay in their land.

As for the third opinion, then it can be interpreted as being that if they prevent him from leaving and he is unable to show his religion, then he may kill those who prevent him from leaving and take their wealth. But it is not permissible for other than him, due to what was previously stated about remaining faithful to the conditions. And Allāh knows best.

FIVE: IF THE ENEMY SETS HIM FREE ON THE CONDITION THAT HE DOES WHAT THEY WANT IN THE ISLAMIC LANDS

There are two issues to consider:

1. If the enemy sets him free on the condition that he brings them a ransom from the land of Islām.
2. If the enemy sets him free to be a spy for them against the Mujāhidīn.

1. IF THE ENEMY SETS HIM FREE ON THE CONDITION THAT HE BRINGS THEM A RANSOM FROM THE LAND OF ISLĀM

The jurists differed – may Allāh have mercy on them – on whether this condition must be observed. There are two opinions:

1. He must remain faithful to these conditions and send the money to them, or return to them with it. This is the majority opinion, but the Hanbalīs differed with it. In their old school, the Shāfi‘īs stipulated that the prisoner is not being forced to pay the ransom, but if he is then he is not obligated to pay it.⁴¹

The majority opinion was evidenced with the following:

i. The general nature of the saying of Allāh,

﴿وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ﴾

And fulfill the Covenant of Allāh when you have covenanted⁴²

ii. The general nature of the saying of the Prophet (ﷺ), “*The Muslims are [loyal to] their conditions.*”⁴³

iii. When the Prophet (ﷺ) made a treaty with Quraysh in the Hudaibiyyah that he would return to them whoever came to him from the Quraysh - even if he was a Muslim - he fulfilled their conditions, and said, “*Treachery is not permitted in our religion.*”⁴⁴

iv. There is benefit to the prisoners in being loyal, and there is harm to them in treachery, because if a prisoner is treacherous they will not later trust any prisoner, and the needs calls for them to free the captives, so faithfulness is necessary.⁴⁵

2. He need not remain loyal to the conditions.

⁴¹ *al-Mughnī* 13/184, *Kashshāf al-Qinā’* 2/429, *Rawdat al-Tālibīn* 10/284, and *Mughnī al-Muhtāj* 6/56.

⁴² *al-Nahl*, verse 91

⁴³ *Sabīh al-Bukhārī* with *al-Fat’h*, The Book of Wages, the Wages of the broker 4/569

⁴⁴ Its citation was mentioned before, in *Sabīh al-Bukhārī* from a long *hadīth*. See pg. 439

⁴⁵ *al-Mughnī* 13/184, and *Kashshāf al-Qinā’* 2/429

This is the most well known opinion of al-Shāfiʿī,⁴⁶ and it is one opinion held by the Mālikīs,⁴⁷ and a narration from the Hanbalīs if the prisoner is unable to pay the ransom,⁴⁸ and it is also the view of Ibn Hazm.⁴⁹

They cited the following as evidence:

- i. The Prophet (ﷺ) forbade that Muslim women be returned to the disbelievers after the Hudaibiyyah treaty⁵⁰ due to the saying of Allāh the Exalted,

﴿فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ﴾

then if you ascertain that they are true believers, send them not back to the disbelievers⁵¹

- ii. Emigration from the land of war is obligatory, and returning to it is an act of disobedience, so it is not permissible to return.⁵²

The evidence with the verse was disputed because not returning the Muslim women to the disbelievers is an exception, because it will empower them to have intercourse with these women and that is forbidden. But with regards the men, the Prophet (ﷺ) returned Abū Basīr and others to the disbelievers,⁵³ so this indicates it is obligatory to remain faithful to the conditions.

The Strongest Opinion

⁴⁶ *al-Hāwī al-Kabīr* 14/71, *Rawdat al-Tālibīn* 10/284, and *Mughnī al-Muhtāj* 6/56

⁴⁷ *al-Tāj wa-al-Iklāl bi-Hāmiṣ Mawābiḥ al-Jalīl* 4/548, and *Hāshiyat al-Khurasānī* 4/21

⁴⁸ *al-Mughnī* 13/185, and they said that if the released captive is a woman she should not return to them at all, due to the saying of Allāh the Exalted, “**Send them not back to the disbelievers**” (al-Mumtahinah, verse 10)

⁴⁹ *al-Muhallā bi-al-Āthār* 5/364

⁵⁰ *Ṣaḥīḥ al-Bukhārī* with *al-Fat’h*, The Book of Battles, Chapter: The Battle of Hudaibiyyah, *ḥadīth* #4180, 4181

⁵¹ al-Mumtahinah, verse 10

⁵² *al-Hāwī al-Kabīr* 14/271

⁵³ *al-Mughnī* 13/184, and *Kashshaf al-Qinā’* 2/429

It appears that the first opinion is stronger due to the strength of their evidences, and due to the benefit of the prisoners in being released from captivity, and to make people desire to enter Islām as it calls for faithfulness and forbids treachery even with the enemy, but he should send the ransom to them and not return to them because this will cause him harm. And Allāh knows best.

2. IF THE ENEMY SETS HIM FREE TO BE A SPY⁵⁴ FOR THEM AGAINST THE MUJĀHIDĪN.

The jurists⁵⁵ agree – may Allāh have mercy on him – that it is forbidden for a Muslim to spy on the Muslims for the benefit of the enemy, in any manner, and for any reason.

Allāh the Exalted said,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ﴾

O you who believe! Betray not Allah and His Messenger, nor betray knowingly your trusts⁵⁶

And Allāh the Exalted said,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا عَدُوِّي وَعَدُوَّكُمْ أَوْلِيَاءَ تُلْقُونَ إِلَيْهِم بِالْمَوَدَّةِ﴾

O you who believe! Take not My enemies and your enemies (i.e. disbelievers and polytheists, etc.) as friends, showing affection towards them⁵⁷

They differed regarding the punishment that should be given for the one who does this. There are three opinions:

⁵⁴ This means that he searches for the hidden faults and information. Here it means that the disbelievers would send him to spy upon the Muslims and know their affairs, then inform the disbelievers of this. See: *al-Istrāṭijīyyāt al-‘Askariyyah fī al-Islām* pg. 282

⁵⁵ *al-Mabsūt* 10/86, *al-Sharh al-Kabīr bi-Hāmiṣh Hāshiyat al-Dasūqī* 2/182, *al-Jāmi‘ li-Abkām al-Qur’ān* 18/48, *Sharh Sahīb Muslim* 15/288, *al-Mughnī* 13/185, and *Abkām al-Qur’ān* by al-Shāfi‘ī pg. 385.

⁵⁶ al-Anfāl, verse 27

⁵⁷ al-Mumtahinah, verse 1

1. He should be reprimanded in the most suitable way, be it hitting or imprisonment, but he should not be killed.

This is the view of the Hanafīs,⁵⁸ the Shāfi‘īs,⁵⁹ one opinion of the Mālikīs,⁶⁰ and the apparent opinion of the Hanbalīs.⁶¹

They cited as evidence the following:

i. The story of the Companion Hātib ibn Abī Balta‘ah⁶² (may Allāh be pleased with him) when he sent a message to Quraysh informing them that the Prophet (ﷺ) was determined to conquer Makkah. It is narrated on the authority of ‘Alī ibn Abī Tālib (may Allāh be pleased with him) that he said: The Messenger of Allāh (ﷺ) sent me with az-Zubayr and al-Miqdād ibn al-Aswad⁶³ and he (ﷺ) said, “Proceed until you reach Rawdhah Khākh,⁶⁴ where there will be a woman with a letter. Take it from her.” So we set out with our horses running fast until we arrived at ar-Rawdhah where we found the woman. We said, “Take out the letter.” She said, “I do not have a letter.” So he said, “You will take it out or we will remove your clothes [to find it].” So she took it out from her braid, and we took it to the Messenger of Allāh (ﷺ). It said: ‘From Hātib ibn Abī Balta‘ah to people from Makkah, informing them of some of the affairs of the Messenger of Allāh (ﷺ).’ So the Messenger of Allāh (ﷺ) said, “What is this O Hātib?” He said, “O Messenger of Allāh, do not be hasty [in your

⁵⁸ *al-Kharāj* by Abū Yūsuf pg. 190, *al-Siyar al-Kabir* 4/248

⁵⁹ *al-Umm* 4/249

⁶⁰ *al-Dhakhirah* 3/400, *al-Jāmi‘ li-Abkām al-Qur‘ān* 18/49, and *Abkām al-Qur‘ān* by Ibn al-‘Arabī 4/255

⁶¹ *Kashshāf al-Qinā‘* 2/380

⁶² He is Hātib ibn ‘Amr ibn ‘Umayr ibn Salamah al-Lakhmī, he fought at Badr, and died in the year 30 Hijrī during the Caliphate of ‘Uthmān when he was sixty-five years old. See: *al-Isābah* 2/4, #1543, and *Usd al-Ghābah* 1/431 #1011

⁶³ He is al-Miqdād ibn ‘Amr ibn Tha‘labah ibn Mālik ibn Rabī‘ah al-Kindī. It is said: al-Hadramī, nicknamed Abū al-Aswad. He accepted Islām early and performed the two migrations. He fought in all the battles and was a knight on the Day of Badr. He married the daughter of al-Zubayr ibn ‘Abd al-Muttalib, and narrated *hadiths* on the authority of the Prophet (ﷺ). He died in 33 Hijrī during the Caliphate of ‘Uthmān. *al-Isābah* 6/159 #8201, and *Usd al-Ghābah* #5069.

⁶⁴ It is a place between Makkah and al-Madīnah, 12 miles away from al-Madīnah. See: *Mu‘jam al-Buldān* 2/383 #4057.

judgment] over me, for I was a man who was an ally of the Quraysh but I was not actually from them. The Emigrants with you had relatives in Makkah who would protect their dependents and property. So I wanted to recompense that I was not linked to them by blood by doing them a favour by which they would protect my dependants. I did not perform an act of disbelief or apostasy, nor did I do it preferring disbelief after belief.” So the Messenger of Allāh (ﷺ) said, “*Hātib has spoken the truth to you.*” ‘Umar said, “O Messenger of Allāh, let me strike the neck of this hypocrite.” So he (ﷺ) said, “*He fought at Badr, and you do not know, perhaps Allāh has already looked at the people of Badr and said, ‘Do whatever you desire, for I have forgiven you’*.”^{65, 66}

In one narration, ‘Umar said, “He has betrayed Allāh and His Messenger, so allow me to strike his neck.”⁶⁷

The textual implications of this *ḥadīth* are that the Prophet (ﷺ) did not kill Hātib ibn Abī Balta’ah even though he informed the polytheists about the affairs of the Prophet (ﷺ), when he wanted to attack them by surprise. This applies generally to Hātib and others.⁶⁸

This evidence was disputed with on the basis that the Prophet (ﷺ) did not kill Hātib because he was a veteran of Badr, and this is a factor that is not present in others.⁶⁹

ii. It is narrated on the authority of ‘Abdullāh ibn Mas‘ūd (may Allāh be pleased with him) that he said: The Messenger of Allāh (ﷺ) said, “*The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am the Messenger of*

⁶⁵ It means: the sins will be forgiven in the Hereafter. But if any of them had to have a legal punishment carried out on them, then it must be performed in this life. See: *‘Aḥḥad al-Ma‘būd* 7/224

⁶⁶ *Sahīḥ al-Bukhārī* with *al-Fat’h*, The Book of Jihād and Expeditions, Chapter: Spies, *ḥadīth* #3007; also in: The Book of Exegesis, Chapter: al-Mumtahinah, #4890; also in *Sahīḥ Muslim* bi-Sharḥ al-Nawawī, The Book on the Virtues of the Companions, Chapter: The virtues of the people of Badr, *ḥadīth* #2494.

⁶⁷ *Sahīḥ al-Bukhārī* with *al-Fat’h*, The Book of Battles, Chapter: The virtues of those who fought at Badr, *ḥadīth* #3983

⁶⁸ *al-Umm* 4/250

⁶⁹ *al-Sharḥ al-Mumtā’* 8/98, and *Zād al-Ma‘ād* 3/423

*Allāh, cannot be shed except in three cases: In retaliation for murder, a married person who commits illegal sexual intercourse and a person who apostates from Islām and leaves the Muslims.”*⁷⁰

The textual implications of the *hadīth* is that it is impermissible to kill a Muslim for other than these three reasons, therefore spying on the Muslims for the benefit of the disbelievers does not make their blood lawful.⁷¹

This can be contended with on the basis that killing a Muslim is not restricted to what has been mentioned in the *hadīth* of Ibn Mas‘ūd, because there are authentic texts that indicate the permissibility of killing a Muslim in situations other than those mentioned by the *hadīth*. This includes his (رضي الله عنه) saying, “*When you are holding to one single man as your leader, you should kill who seeks to undermine your solidarity or disrupt your unity.*”⁷²

2. He should be killed

This is the opinion held by the Mālikīs,⁷³ and one opinion of the Hanbalīs.⁷⁴

They cited their opinion with the following:

i. The previous *hadīth* of Hātib ibn Abū Balta‘ah.

The textual implications of this are that the Prophet (ﷺ) would have permitted ‘Umar (may Allāh be pleased with him) to kill Hātib were it not for the preventive, which is that he had fought at Badr, but this is absent in other than Hātib. If Islām were the factor that stopped him being killed, he would not have given a more specific justification which is that he had fought at Badr.⁷⁵

⁷⁰ *Sahīh al-Bukhārī* with *al-Fat’h*, The Book of Blood-money, Chapter: The saying of Allāh, “**a soul for a soul,**” *hadīth* #6878; also in *Sahīh Muslim bi-Sharh al-Nawawī*, The Book of Oaths, Chapter: When the blood of a Muslim is permitted, *hadīth* #1676.

⁷¹ *al-Umm* 4/249

⁷² *Sahīh Muslim bi-Sharh al-Nawawī*, The Book of Government, Chapter: Judgment on the one who tries to disrupt the unity of the Muslims, *hadīth* #1852.

⁷³ *al-Dhakhīrah* 3/400, and *al-Tāj wa-al-Iklīl bi-Hāmisī Mawāhib al-Jalīl* 4/553

⁷⁴ *Zād al-Ma‘ād* 3/423, and *al-Sharh al-Mumtī‘* 8/98

⁷⁵ *Fat’h al-Bārī* 8/820

This can be contended with on the basis that the thing that prevented Hātīb from being killed is that he is a Muslim, not that he fought at Badr, so this encompasses every Muslim.

What indicates this is that when the Prophet (ﷺ) commanded the death of Furāt ibn Hayyān⁷⁶ because he was a spy on the Muslims, he said, “I am a Muslim.” So he (ﷺ) said, “*Among you are men whom we entrust with their faith, one of them is Furāt ibn Hayyān.*”⁷⁷

So the Prophet (ﷺ) did not kill him, despite being a spy for the enemy over the Muslims, because he said, “I am a Muslim.” So his Islām prevented his being killed.

ii. Killing him will repel an evil, and serve as a deterrent for similar actions in the future.⁷⁸

3. His punishment is at the discretion of the *Imām*

If the *Imām* sees that there is benefit in killing him, then he should kill him. If he sees it to be other than that, then he should do what is most appropriate, and whatever deters similar actions.

This is an opinion narrated by Mālik⁷⁹, and chosen by Ibn al-Qayyim from the Hanbalīs.⁸⁰

⁷⁶ He is Furāt ibn Hayyān ibn Tha‘labah ibn ‘Abd al-‘Uzzā ibn Habīb al-‘Ijlī, he was a spy for Abū Sufyān on the Muslims, then he accepted Islām, and became a Companion. He went to al-Kūfā where he narrated this *hadīth* on the authority of the Prophet (ﷺ). See: *al-Isābah* 5/272, #6980, and *Usd al-Ghābah* 4/51, #4199

⁷⁷ Cited by al-*Imām* Ahmad in al-Musnad 14/336 *hadīth* #18867; Abū Dāwūd in his Sunan with ‘*Ann al-Ma‘būd*, The Book of Jihād, Chapter: On the *dhimmī* spy, *hadīth* #2649. It is said in ‘*Ann al-Ma‘būd*: al-Tirmidhī said, “The chain includes Abū Hammām al-Dallāl and his *hadīths* cannot be used as evidence...” It was also narrated on the authority of al-Thawrī through Bishr ibn al-Sirrī al-Basrī, and he is of those about whose authenticity al-Bukhārī and Muslim agreed. It is also narrated on the authority of al-Thawrī by ‘Abbād ibn Mūsā al-Azraq, who was trustworthy. See: ‘*Ann al-Ma‘būd* 7/225. al-Hākim declared it authentic in *al-Mustadrak*, and al-Dhahabī agreed with him. See: *al-Mustadrak*, The Book of Legal Punishments, *hadīth* #8093. In the endnotes are the summary by al-Dhahabī, and al-Albānī authenticated it. *Sahīh Sunan Abī Dāwūd*, *hadīth* #2310.

⁷⁸ *al-Sharh al-Mumtā’* 8/98

It is stated in *al-Dhakḥirah* that Mālik said: The *Imām* should decide his case, like the fighter.⁸¹

And in *Zād al-Ma'ād*: What is correct is that killing him is at the discretion of the *Imām* – if he sees a benefit to the Muslims by it, then he may be killed, but if there is more benefit in him being alive, then he should leave him alive.⁸²

The Strongest Opinion

The third opinion is strongest, in that his punishment is at the discretion of the *Imām*.

The *Imām* is responsible for the Jihād, planning the war, and it is him who weighs up the benefits and harms. So the punishment of the spy should be up to him. Moreover, this opinion reconciles the previous two opinions, and acts on all the evidences.

And Allāh knows best.

⁷⁹ *al-Dhakḥirah* 3/400, *al-Jāmi' li-Abkām al-Qur'an* 18/49, *al-Tāj wa-al-Iklīl bi-Hāmish Mawāhib al-Jalīl* 4/552

⁸⁰ *Zād al-Ma'ād* 3/423

⁸¹ *al-Dhakḥirah* 3/400

⁸² Ibid, endnote #4